

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington 25, D. C.

In the Matter of

AMERICAN TELEPHONE AND TELEGRAPH
COMPANY, LONG LINES DEPARTMENT,
Tariff F.C.C. No. 227.

PROTEST IN BEHALF OF
THE WESTERN UNION
TELEGRAPH COMPANY

In pursuance of Section 204 of the Communications Act of 1934, as amended, The Western Union Telegraph Company (hereinafter called "Western Union") respectfully petitions the Commission to enter upon a hearing concerning the lawfulness of tariff schedules issued September 23, 1955 and filed with the Commission by American Telephone and Telegraph Company, Long Lines Department, (hereinafter called "AT&T") to become effective November 1, 1955, designated as Tariff F.C.C. No. 227, together with related tariff amendments filed concurrently in AT&T Tariffs F.C.C. Nos. 134, 145, 220 and 228, and, pending such hearing and the decision thereon by the Commission, to suspend the operation of said tariff schedules.

In support thereof Western Union respectfully shows:

1. Such supporting data as have been filed with the Commission by AT&T have been made available to Western Union, and we submit that neither the Commission nor any other interested person can possibly ascertain therefrom whether the proposed rates are reasonable in relation to existing rates for the individual services involved or in relation to costs of providing service and ascertain the complete

effects of the proposed tariff schedules. Without such information the Commission cannot possibly be in a position to determine whether the charges, practices, classifications and regulations for and in connection with such communication service are just and reasonable within the meaning of Section 201 (b) of the Communications Act. Obviously, the Commission will need to obtain this data (and it should be made available to all interested parties) before permitting the proposed tariff schedules to become effective. The need for such data and the time required for analyzing and appraising it alone justify the suspension of the proposed tariff.

Volume Rates

Such meager data as are available, and the tariff schedules by themselves clearly indicate that they are unjust and unreasonable and therefore unlawful within the meaning of the Act.

2. The question to be determined by the Commission is whether the discriminatory charges provided for in the tariff schedules herein are just and reasonable or unjust and unreasonable (See Section 202 (a) of the Act). We respectfully submit that they are unjust and unreasonable and therefore unlawful, for the following reasons:

- a. Volume rates which are promotive of monopoly are unjust and unreasonable, and wherever the Commission finds that such result will obtain authority has been granted to it to declare them to be unlawful. 15 U.S.C.A. Sections 13 and 21. We think it evident that the proposed tariff schedules will have that result. Under the proposed tariff schedules any customer who

presently has, or in the future is likely to have, Private Wire Service requirements would be disinclined to subscribe to Western Union service. Since the proposed rates are applied on a section basis - i.e. the facilities between any two consecutive service points - if they produce lower charges in any given section of a network, it would be more advantageous to a customer to transfer the entire service to the telephone company. Further even if the proposed rates would not presently offer an advantage, a customer would have no incentive to subscribe to the Western Union service, particularly if switching center installations are involved, because a change-over to the AT&T system at a later date would mean substantial additional installation charges. The net effect of the proposed tariff schedules, therefore, will be to promote a complete monopoly in the private wire field in favor of AT&T. We submit that not only does the Commission have the authority, but it has the affirmative duty to prevent such an unlawful result.

- b. Unless in violation of other provisions of law, such as has been discussed in "a" above, volume rates which tend to promote maximum use of a given facility of a utility are generally found by regulatory agencies to be just and reasonable upon a showing that there is a sound economic or

competitive basis therefor. However, we know of no sanction granted by a regulatory agency to a utility to establish lower charges which are based only on the number of facilities used. The volume rates proposed by AT&T are not designed to promote the maximum use of a specific communication facility, but are based on the number of facilities that are used. We submit that it was just this type of discrimination or preferential treatment that regulation seeks to prevent.

The Combination of Voice and
Record Communication Service

3. The provisions of the tariff schedules permitting discount rates for a combination of voice and record communication channels constitute a tie-in or package deal of the most vicious type. It must be borne in mind that only AT&T can provide such a combination of communication services. It is unjust and unreasonable to give a communications user lower telegraph rates because of use of voice communications. Indeed, under the proposed tariff schedules, the optimum combined use can result in free telegraph service!

It is apparent that the proposed AT&T offering is designed to give the AT&T an unfair competitive advantage in the private wire service field by combining voice and record communications services which it alone can offer thereby eliminating Western Union from the private wire field. The proposed rate pattern is designed to bring to the telephone company all of the business in this private wire field. The tariff schedules further show that the

reductions for telegraph channels are generally greater than for telephone channels and, as a matter of fact, over a certain section of mileage the telephone channel rates are higher than those presently applied.

This tariff seems to us to be analogous to the filing by Western Union of a tariff which would permit reduced international telegraph rates to a customer for a combination of domestic telegraph service and international telegraph service. If Western Union were to propose a volume rate plan, under which it would henceforth package domestic and international message services and rates, with discounts increasing in relation to the volume of business filed thus enabling it to monopolize international telegraph traffic, there can be no doubt that such a plan would be held by the Commission to be unjust, unreasonable and therefore unlawful.

It appears that this is another instance in which the telephone company is cutting rates where it will hurt Western Union and will promote the further invasion of the record service field by AT&T. National communication policy contemplates that AT&T abandon the record communication field. It most certainly does not contemplate that AT&T be granted a monopoly in a very important field of domestic communications.

The proposed tariff schedules cannot be justified on the grounds of "national defense". The quantum of rates has little bearing on national defense. Indeed, by continuing to use the pretext of national defense, AT&T eventually will put the record communication carriers, both domestic and international, out of business. Such a result should be of greater concern to "national defense".

Wherefore, it is respectfully requested that the Commission enter upon a hearing concerning the lawfulness of the tariff schedules herein, and, pending such hearing and the decision thereon by the Commission to suspend the operation of said tariff schedules.

Respectfully submitted,

JOHN H. WATERS
WILLIAM WENDT
WILLIAM E. SEWARD

Attorneys for The Western
Union Telegraph Company,
60 Hudson Street,
New York 13, N. Y.

Dated: New York, N. Y.
October 11, 1955.

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
)ss:
COUNTY OF NEW YORK)

ANNA V. De GARAY, being duly sworn, deposes and says
that she has this day served a copy of the foregoing Protest of
The Western Union Telegraph Company, on the following, by mailing
it addressed as follows:

American Telephone and
Telegraph Company,
195 Broadway,
New York, N. Y.

ANNA V. De GARAY

Subscribed and sworn to before me
this 11th day of October 1955.

WALTER E. BESIEGEL

WALTER E. BESIEGEL
Notary Public, State of New York
No. 43-0278300
Qual. in Richmond Co. Cert. filed
with N.Y. Co. Clerk
Commission Expires March 30, 1957.

(SEAL)